

April 15, 2015



**Human Rights Watch Submission
to the Committee on the Rights of Persons with Disabilities**

Human Rights Watch welcomes the opportunity to provide input to the Committee on the Rights of Persons with Disabilities' ("the Committee") for its Day of General Discussion on the right to education for persons with disabilities. Human Rights Watch strongly supports the Committee's interest in further examining article 24 of the Convention on the Rights of Persons with Disabilities ("the Convention") on the right to education for persons with disabilities.¹

This submission is based on Human Rights Watch's research on China,² India,³ Nepal,⁴ Russia,⁵ and Zambia,⁶ among other countries, as well as our ongoing monitoring of the right to education for persons with disabilities. It builds on Human Rights Watch's submission to the Office of the United Nations High Commissioner for Human Rights on the 2013 thematic study on the right to education for persons with disabilities.⁷

This submission focuses on key provisions of article 24, in particular access to primary and secondary education, the limited availability of quality education offered to children with disabilities, and reasonable accommodation in education, as well as challenges faced by state parties in the implementation of inclusive education. The submission further presents evidence on cross-cutting issues, such as the right to education in humanitarian contexts, the institutionalization of children with disabilities in orphanages and foster care, and the lack of access to HIV education

¹ International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (CRPD), G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), *entered into force* May 3, 2008.

² Human Rights Watch, *As Long as They Let us Stay in Class: Barriers to Education for Persons with Disabilities in China*, July 2013, <http://www.hrw.org/reports/2013/07/15/long-they-let-us-stay-class-o>.

³ Human Rights Watch, *Treated Worse Than Animals: Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*, December 2014, <http://www.hrw.org/reports/2014/12/03/treated-worse-animals-o>.

⁴ Human Rights Watch, *Futures Stolen: Barriers to Education for Children with Disabilities in Nepal*, August 2011, <http://www.hrw.org/reports/2011/08/24/futures-stolen>

⁵ Human Rights Watch, *Abandoned by the State: Violence, Neglect, and Isolation for Children with Disabilities in Russian Orphanages*, September 2014, <http://www.hrw.org/reports/2014/09/15/abandoned-state-o>; Human Rights Watch, *Barriers Everywhere: Lack of Accessibility for People with Disabilities in Russia*, September 2013, <http://www.hrw.org/reports/2013/09/11/barriers-everywhere-o>.

⁶ Human Rights Watch, *We Are Also Dying of AIDS: Barriers to HIV Services and Treatment for Persons with Disabilities in Zambia*, July 2014, <http://www.hrw.org/reports/2014/07/15/we-are-also-dying-aids-o>.

⁷ Human Rights Watch Submission on the study on the right to education for persons with disabilities, September 20, 2013, <http://www.ohchr.org/Documents/Issues/Disability/StudyEducation/NGOs/GlobalHumanRightsWatch.pdf>.

programs for children with disabilities. Finally, it offers a number of good practices and key recommendations.

1. Equal access to inclusive, quality education for children with disabilities

Girls and boys with disabilities continue to be discriminated against and “disproportionately” denied their right to education, compared with children without disabilities.⁸ This is in spite of existing human rights obligations that protect the right to free and compulsory primary education, as well as global development efforts to enroll all girls and boys in primary school, spurred by the United Nations Millennium Development Goal to ensure that “by 2015, children everywhere, girls and boys alike, will be able to complete a full course of primary schooling.”⁹

Globally, it is difficult to estimate how many children with disabilities of primary and lower-secondary school-going age are out of school,¹⁰ though they are considered “among the most disadvantaged” in terms of missing out on education, are often “invisible” in the data, and are often overlooked even in programs targeting out-of-school children.¹¹ According to UNESCO and UNICEF, many countries that report achieving “universal primary enrollment,” have left out children with disabilities,¹² particularly children with psychosocial or intellectual disabilities, children with autism spectrum disorders and children with multiple disabilities who often face discrimination and complex barriers to enrolling in any type of school.

The recent global focus on primary education has also left a significant gap in reporting on the implementation of the right to secondary education of children with disabilities. The rate of transition to secondary and higher education for children with disabilities is significantly lower than for their non-disabled peers.¹³ Many children with disabilities have not been able to access secondary education on an equal basis with other children, often because of a lack of inclusive secondary schools; the lack of reasonable accommodations in both primary and secondary education¹⁴; and where schools and teachers hold negative attitudes of what older children with disabilities can or cannot do beyond compulsory education,¹⁵ including through limitations on the choice of subjects or skills programs available to people with disabilities.¹⁶

Discrimination in access to education for children with disabilities, particularly for older children, has profound individual and public health effects. In Zambia, for example, Human Rights Watch found that children with disabilities are significantly more likely to have never attended school,¹⁷ and even when they are able to attend, they lack effective access to HIV prevention information disseminated in schools. Special education teachers and children with disabilities are also typically

⁸ UNESCO and UNICEF, “Fixing the Broken Promise of Education for All: Findings from the Global Initiative on Out-of-School Children,” January 2015, p. 76.

⁹ UN Millennium Project, “Goals, targets and indicators,” <http://www.unmillenniumproject.org/goals/gti.htm#goal2>.

¹⁰ UNESCO and UNICEF, “Fixing the Broken Promise of Education for All,” p. 76.

¹¹ Ibid.

¹² Ibid., p. 78.

¹³ Ibid.

¹⁴ Human Rights Watch, *Futures Stolen*, p. 31.

¹⁵ Human Rights Watch, *As Long as They Let Us Stay in Class*, p. 4, pp. 54-55.

¹⁶ Ibid.

¹⁷ Zambia Central Statistical Office, “2010 National Census of Population and Housing: National Analytical Report,” in Human Rights Watch, *We Are Also Dying of Aids*, p. 18.

not involved in extra-curricular HIV prevention initiatives. More broadly, HIV materials are not produced in simplified formats, braille, large print, or sign language symbols.¹⁸

Human Rights Watch has also documented the particular impact that lack of menstrual hygiene management has on adolescent girls with disabilities and their access to secondary education.¹⁹ In Nepal, for example, girls with disabilities often drop out of school once they reach puberty because there are no support services in schools to help them during their period.²⁰ The lack of a safe space to manage menstrual hygiene impacts all girls, but the difficulty that girls with disabilities have in moving, dressing, and using the bathroom independently increases their vulnerability to intrusive personal care or abuse, thereby discouraging them from going to school.²¹

a. Access to education in humanitarian emergencies

Globally, it is estimated that over 28.5 million primary-school-age children are out of school in conflict-affected countries.²² Given the absence of reliable data in humanitarian crises, it is difficult to ascertain exactly how many children with disabilities remain out of school in these contexts.

In the Central African Republic, Human Rights Watch found that, prior to the conflict, children with sensory, psychosocial or intellectual disabilities rarely attended school, due in part, to limited educational options and inaccessible infrastructure.²³ For example, we found only one primary school for blind or deaf children in the capital, Bangui, which was vandalized during the conflict and was no longer functional. Currently, children with disabilities do not have access to education services provided through the internationally-led humanitarian response. For example, in one temporary school set up in a displacement camp, Human Rights Watch found that out of nearly 3,800 children enrolled, only 14 had mild physical or sensory disabilities. The director of the school told Human Rights Watch that the school was unable to accommodate children with sensory, psychosocial, or intellectual disabilities because teachers are not appropriately trained. Even children with physical disabilities are often unable to attend school due to lack of adequate seating and accommodations or because of parental concerns that they will be left behind in the case of an attack.

b. Access to education for children living in institutions

Human Rights Watch has recently documented cases of excessive institutionalization of persons with disabilities, a practice that continues to affect many children with disabilities and significantly limits their right to education.

In India, for example, Human Rights Watch documented the involuntary admission and arbitrary detention of girls and women with psychosocial or intellectual disabilities in mental hospitals and residential care institutions across the country. Human Rights Watch found that once girls with disabilities are inside these institutions, they are not allowed to leave the premises and are often

¹⁸ Human Rights Watch, *We Are Also Dying of AIDS*, p. 3.

¹⁹ Human Rights Watch, *Statement before the CRPD on the Day of General Discussion on Women and Girls with Disabilities*, April 17, 2013, <http://www.hrw.org/news/2013/04/17/statement-crpd-committee-day-general-discussion-women-and-girls-disabilities>.

²⁰ Human Rights Watch, *Futures Stolen*, p. 37.

²¹ *Ibid.*

²² UNESCO, "Education for All Global Monitoring Report, Children still battling to go to school," *Policy Paper 10*, July 2013, p. 1.

²³ See Human Rights Watch, 'Muslims trapped in Central African Republic', January 6, 2015 <http://mm.hrw.org/content/muslims-trapped-central-african-republic>.

denied their legal right to education, in violation of India's right to education law, which guarantees free and compulsory education for all 6 to 14 year olds in the country.

In one case, Human Rights Watch found that in a residential care facility, housing 212 girls with and without disabilities, most girls with disabilities were not sent to school.²⁴ Although we also found a handful of cases where girls with mild intellectual disabilities living in institutions did go to school, a staff member still maintained, "It is no use sending girls with disabilities to school" because they do not learn much, as the curriculum is not adapted and special educators are not present.²⁵ In residential institutions, there is a notable lack of education and skills-based programs that result in girls not learning even basic life skills.

In Russia, approximately 30 percent of children with disabilities live separately from their families in closed state institutions. Many are relinquished by their parents in orphanages as young children after state doctors pressure parents to give up custody, claiming that children will not develop or that parents will be unable to care for them. Russian law guarantees equal access to education for all students, "given a diversity of special educational needs and individual capabilities." Yet Human Rights Watch found that children with disabilities living in state orphanages often receive little or no education at all. Once in institutions, some children, particularly children with disabilities deemed to be especially severe by orphanage staff, are confined to separate rooms or wards known as "lying-down rooms" where they typically receive no education at all, based on institution staff's convictions that children are not capable of developing or learning, or that leaving their cribs to engage in activity would endanger children's health.²⁶ Other children receive some limited, usually individualized, education within the institution.

2. Failures to implement inclusive education in policy and practice

Human Rights Watch has found that the meaning of "inclusive education" continues to be ill-defined or vaguely referenced in law, national policy, or national education plans. Inclusion focuses on promoting accessibility, identifying and removing barriers to learning, and changing practices and attitudes in mainstream schools to accommodate the diverse learning needs of individual students. However, the concept is often interpreted narrowly to refer to "special needs education" only.

Even where governments may have inclusive education laws or policies, these often do not translate into widespread implementation. In a number of countries, Human Rights Watch has found that governments implement inclusive education plans in ad-hoc ways, seeing inclusive education as a way to integrate children with disabilities into the system rather than an opportunity to ensure all education institutions are able to adapt to and provide quality education to any student with diverse needs and abilities.²⁷

The Convention promotes the "goal of full inclusion"²⁸ while at the same time considering the "best interests of the child."²⁹ Human Rights Watch research indicates that many governments continue

²⁴ Human Rights Watch, *Treated Worse than Animals*, p. 58.

²⁵ Human Rights Watch, *Treated Worse than Animals*, p. 58.

²⁶ *Ibid.*, p. 62.

²⁷ Human Rights Watch, *As Long as They Let Us Stay in Class*, pp. 18-19; Human Rights Watch, *Submission on the study on the right to education for persons with disabilities*, September 20, 2013.

²⁸ CRPD, art. 24(2)(e).

²⁹ CRPD, art. 7(2).

to have a strong focus on specialized, separate education for children with disabilities, with limited meaningful inclusion in mainstream schools. This has often led to significant tension on what type of education is best for children with very different types of disabilities.

In some cases, Human Rights Watch has found separate budgets intended for “inclusive education” are often used instead to finance special or segregated schools,³⁰ or that schools have used limited funds for inclusion only to waive miscellaneous fees, provide children with a small cash subsidy, or offer a cash incentive to motivate teachers to teach children with disabilities.³¹

It is important that schools and education officials work with parents to consider the long-term consequences and benefits of placing a child in a specialized or a mainstream environment. Human Rights Watch has found cases where children who study in special schools catering to particular types of disabilities do not have equal opportunities to study core subjects, such as mathematics or sciences, which would allow them to proceed on to higher levels of education.³² This constitutes an additional barrier for many children with disabilities who have the capacity³³ to pursue higher levels of education beyond vocational or technical training traditionally offered as an exit from special schools.³⁴

Human Rights Watch has found that the poorest families often have very limited or no access to information essential to making an informed decision on what school is best for their children.³⁵ Parents have told Human Rights Watch that they simply chose schools where they believed their children would be safe from discrimination or abuse by teachers and peers, or where they would have a marginally better experience with teachers who have some skills or knowledge of how to work with their children.³⁶ Human Rights Watch believes that the lack of *meaningful choice* faced by children with disabilities and parents constitutes a harmful barrier that limits the selection of the most appropriate educational setting for children.³⁷

3. Failure to provide quality education

Human Rights Watch has found that even when children with disabilities are in school, they often receive an inferior *quality* education that does not enable “the development by persons with disabilities of their personality, talents, and creativity, as well as their mental and physical abilities, to their fullest potential,” as required by the Convention.³⁸ Often the degree to which children with disabilities benefit from quality education greatly depends on the type of school they enroll in, the

³⁰ Human Rights Watch, *Futures Stolen*, p. 28.

³¹ Human Rights Watch, *As long as They Let Us Stay in Class*, pp. 36-37.

³² Human Rights Watch, *Barriers Everywhere*, p. 45; *As Long as They Let Us Stay in Class*, p. 4, pp. 54-55.

³³ Convention on the Rights of the Child, art. 28(1)(c).

³⁴ Human Rights Watch, *As Long as They Let Us Stay in Class*, p.4, pp. 54-55.

³⁵ Human Rights Watch, *As long as They Let Us Stay in Class*, p. 5, pp. 26-30.

³⁶ Human Rights Watch, *As long as They Let Us Stay in Class*; information documented by Human Rights Watch through its on ongoing monitoring.

³⁷ See Human Rights Watch, *As Long as They Let Us Stay in Class*, p. 4.

³⁸ CRPD, art. 24 (1)(b).

size of their classroom, the student to teacher ratio, the resources available for schools that cater to children with disabilities, and the attitudes and skills of teachers, school staff, and other students.³⁹

Teachers are key stakeholders in any inclusive education system, but many are not provided with basic knowledge or understanding of disabilities and how to teach children with diverse abilities. Inclusive education plans have not always been accompanied by improvements and increase in resources dedicated to quality teaching to ensure teachers are provided with adequate training and skills to put inclusive education into practice.⁴⁰

Throughout our investigations, Human Rights Watch has found that teachers in mainstream schools often teach children with disabilities alongside 30-60 students, with no additional classroom support.⁴¹ In large classrooms, teachers may focus only on students who can adapt to the classroom and follow the curriculum.⁴² In some cases, rather than adapting school exams, teachers who are not adequately trained pass children even when they have difficulty taking oral or written exams because they cannot write or speak.⁴³

Such practices may result in failing performance and declining confidence, which only reinforces the effects of existing discrimination on students with disabilities. In China, for example, Human Rights Watch found that a large percentage of students with disabilities eventually drop out of school or move to special education schools because of these factors.⁴⁴ In India, the few girls with intellectual disabilities who Human Rights Watch found enrolled in government school often sat in classrooms with no specialized attention, support, or materials.⁴⁵

Good practices

When parents and family members are fully informed about their children's right to education and involved in decisions on the most appropriate education and setting for their children, Human Rights Watch has found that children with disabilities are able to overcome the multiple barriers that otherwise would prevent them from attending school and getting a quality education.⁴⁶ This is often the case where resources have been invested in creating greater awareness of the importance of sending children with disabilities to school, and where children and family members are fully involved in determining the type of school that is best for the child; and where parents regularly meet with teachers and other school staff to discuss children's progress and any special measures adapted to support a child academically and socially.⁴⁷

To build an inclusive setting, it is important to establish formal mechanisms in schools at all levels for the active involvement of parents and children and young people with disabilities to secure their participation in decision-making and in monitoring the implementation of inclusive education. Ensuring children and parents of children with disabilities form part of school governing or equivalent decision-making bodies may present a key opportunity to promote inclusion at the

³⁹ Human Rights Watch, *Submission on the study on the right to education for persons with disabilities*, September 20, 2013.

⁴⁰ United Nations, "Thematic Study on the right of persons with disabilities to education," *Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/25/29, December 18, 2013, p. 14.

⁴¹ *Ibid.*

⁴² Human Rights Watch, *As Long as They Let Us Stay in Class*, pp. 20, 35.

⁴³ Human Rights Watch, *Abandoned by the State*, p. 56; Human Rights Watch, *Futures Stolen*, pp. 38-39.

⁴⁴ Human Rights Watch, *As Long as They Let Us Stay in Class*, pp.20, 35.

⁴⁵ Human Rights Watch, *Treated Worse than Animals*, p. 58.

⁴⁶ Human Rights Watch, *As Long as They Let Us Stay in Class*, p. 6, 70; Human Rights Watch, *Futures Stolen*, p. 72.

⁴⁷ United Nations, "Thematic Study on the right of persons with disabilities to education," p. 12.

school level. Community-based and national parent networks can serve as mutual support groups, act as advocates with schools and authorities, and provide greater visibility to issues affecting children with disabilities and their education.⁴⁸

4. Reasonable accommodation in education

Human Rights Watch has found that governments do not always implement “reasonable accommodation”⁴⁹ in ways that facilitate children’s accessibility or inclusion. Contrary to the obligations in the Convention, the burden is often on children and families to adapt to whatever service or type of education is available.⁵⁰

Physical barriers represent a significant barrier for many children with disabilities enrolled in mainstream or special schools, despite some relatively cost-effective ways to accommodate children with physical or sensory disabilities and retro-fit buildings to make them accessible. In Russia, for example, Human Rights Watch found that children could not access mainstream schools due to a range of physical obstacles, including lack of ramps, elevators, or lifts. In some cases, parents are compelled to quit working in order to spend the school day with their children and carry them up and down stairs to attend classes. Many children and parents also reported a lack of accessible transportation and housing that prevented children from leaving home and attending school in their communities.⁵¹

For children with disabilities, lack of sanitation at school can be a barrier to quality education. Human Rights Watch found in Nepal that schools do not have accessible toilets. Some children with disabilities who spoke with Human Rights Watch reported having to wait to go home to be able to use the bathroom or even to get their mothers from home every time they need to use the restroom, so their mothers could assist them.⁵² Human Rights Watch found similar accessibility challenges in China, where some schools required parents to care for their children at school as a pre-condition of admitting the children particularly where children need to be accompanied to the bathroom.⁵³

Furthermore, children with sensory disabilities are significantly affected by the lack of provision of “most appropriate languages and modes and means of communication,”⁵⁴ which often reduces their opportunities to access higher education. Students who are hard of hearing told Human Rights Watch that they could not follow along because the teachers walked around while teaching and did not provide written notes, and there was no sign language interpretation in most schools. Students who are blind or who have limited vision were not provided with magnified printed materials or tests.⁵⁵

In addition, with respect to university entrance exams, education authorities in China often fail to make accommodations or provide alternative evaluation methods for students with disabilities. Students who are hard-of-hearing were exempted from the listening portion of university entrance

⁴⁸ Human Rights Watch, *Submission on the study on the right to education for persons with disabilities*, September 20, 2013.

⁴⁹ CRPD, art. 2.

⁵⁰ Human Rights Watch, *Submission on the study on the right to education for persons with disabilities*, September 20, 2013.

⁵¹ Human Rights Watch, *Barriers Everywhere*, p. 45.

⁵² Human Rights Watch, *Futures Stolen*, p. 43.

⁵³ Human Rights Watch, *As Long as They Let Us Stay in Class*, pp. 3, 26-27.

⁵⁴ CRPD, art. 24 (3) (c).

⁵⁵ Human Rights Watch, *As Long as They Let Us Stay in Class*, p. 32.

exams, but they were not exempted from the mandatory listening exams for the national College English Test administered by the Ministry of Education.⁵⁶ In contrast, in a positive move in 2014, the Chinese Education Ministry's decided to provide Braille or electronic exams for national university entrance, though blind candidates who took part of the exams that year reported that they were still not given the appropriate type of exams to accommodate their specific needs.⁵⁷

Good practices

In assessing “available resources” to guarantee “reasonable accommodation,” governments should recognize that inclusive education does not have to be costly or involve extensive infrastructural change and is a necessary investment in education systems. In some cases where resources are limited, schools can simply put classes attended by children with disabilities on the ground floor, so that those children have access both to the classrooms and the toilets. Even where structural modifications are necessary to ensure that buildings are physically accessible to people with disabilities, making the necessary adjustments usually costs only 1 percent of the overall building cost.⁵⁸

Recommendations

To comply with article 24 of the Convention on the Rights of Persons with Disabilities, Human Rights Watch recommends that governments:

- Immediately review and revise their laws and regulations to bring them in line with article 24 of the Convention.
- Ensure existing or new laws or regulations define “inclusive education” and “reasonable accommodation” in accordance with article 24 of the Convention.
- Develop time-bound, strategic plans with adequate resources to move toward an inclusive education system that delivers quality education. Such plans should include:
 - Specific timelines with measurable goals.
 - Adequate budgets to ensure that resources, including teachers, expertise, and equipment, are invested in building and/or strengthening inclusive schools.
 - Adequate training for teachers, school administrators, and education officials at all levels of education in “disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support people with disabilities,” as set out by article 24(4) of the Convention.
 - A thorough evaluation mechanism that motivates, supports, and provides positive incentives for teachers to carry out inclusive education.
 - Formal consultation with independent disabled peoples’ organizations, parents’ organizations, and children with disabilities in the country.
 - Awareness-raising within government institutions of the right to an inclusive education, reasonable accommodation, and non-discrimination.
- Establish an independent body made up of independent disability experts and representatives of children with disabilities and their parents to:
 - Monitor the school system’s compliance with relevant laws and regulations.

⁵⁶ Ibid, p. 43.

⁵⁷ Human Rights Watch, China: Exams Accessible to the Blind a Breakthrough, April 16, 2014, <http://www.hrw.org/news/2014/04/16/china-exams-accessible-blind-breakthrough>.

⁵⁸ Human Rights Watch, *As Long as They Let Us Stay in Class*, p. 66.

- Receive complaints about discrimination and lack of reasonable accommodation at mainstream schools.
 - Identify remaining barriers to quality and inclusive education for students with disabilities.
 - Make recommendations on actions the Ministry of Education can take to ensure access to inclusive education.
- Establish formal mechanisms in schools at all levels of education for the active involvement of parents and children and young people with disabilities to ensure that they participate in decision-making at the school level, as well as monitoring processes in the implementation of inclusive education.